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**No. 87-1981**

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**JOSEPH F. SPANIOLO, JR.**  
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IN THE

**Supreme Court of the United States**

**October Term, 1988**

**CECIL G. HARRIS,**  
*Petitioner,*

**vs.**

**REFINERS TRANSPORT & TERMINAL CORPORATION**  
**and**  
**LOCAL UNION 20, INTERNATIONAL BROTHERHOOD**  
**OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN**  
**AND HELPERS OF AMERICA**  
**and**  
**WILLIAM LICHTENWALD,**  
*Respondents.*

**ON PETITION FOR WRIT OF CERTIORARI**  
**TO THE UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

**BRIEF OF RESPONDENT**  
**REFINERS TRANSPORT & TERMINAL CORPORATION**  
**IN OPPOSITION TO PETITION**  
**FOR WRIT OF CERTIORARI**

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*Corporation*

I.

**QUESTION PRESENTED FOR REVIEW**

Did the United States Court of Appeals for the Sixth Circuit correctly affirm the judgment of the District Court granting summary judgment to Respondents by determining that no genuine issue of material fact existed in support of Petitioner's hybrid §301 action under the Labor Management Relations Act, 29 U.S.C. §185(a)?

## **II.**

### **RULE 28.1 STATEMENT**

**Respondent Refiners Transport & Terminal Corporation is a wholly owned subsidiary of Leaseway Transportation Corp. which is a wholly owned subsidiary of Leaseway Holdings, Inc.**

### III.

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#### IV.

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Respondent, Refiners Transport & Terminal Corporation, hereby respectfully requests that this Court deny the Petition for Writ of Certiorari.

The opinions below and the basis of this Court's jurisdiction are set forth at pages 7 through 10 of the Petition and in Petitioner's Appendix. With the exception of typographical-printing errors the opinions below as set forth in the Appendix are substantially accurate.

### STATUTORY PROVISION INVOLVED

Labor-Management Relations Act of 1947 §301(a),  
(29 U.S.C. §185(a)):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

### STATEMENT OF THE CASE

Petitioner, Cecil Harris, commenced this action in the United States District Court for the Northern District of Ohio in July, 1984. Asserting jurisdiction under §301 of the Labor Management Relations Act, Harris alleged, in what is commonly known as a "hybrid" §301 action, that Respondent, Refiners Transport & Terminal Corporation ("Refiners") breached the collective bargaining agreement when it discharged him from employment. Harris also alleged that

Respondent Teamsters Local 20 breached its duty of fair representation in the handling of his grievance and arbitration proceedings concerning his discharge from employment.

Harris was discharged in January, 1984 because he had accumulated twelve (12) violations of the company's uniform rules during a nine (9) month period. Harris filed a grievance over his discharge and that grievance was ultimately presented before the collectively bargained joint arbitration committee. After hearing the case, the arbitration committee upheld the discharge.

In response to the lawsuit, Refiners moved for summary judgment in the United States District Court in June, 1985. In its motion Refiners asserted, among other arguments, that Harris' §301 claims were deficient in that Harris alleged only insufficient facts and nothing more than conclusory statements in support of his contention that the union breached its duty of fair representation.

Harris did not respond to Refiners' motion for summary judgment, even though the district court granted him a sixty (60) day extension of time in which to file a brief in opposition. On March 31, 1986, after the passage of some ten months, the district court granted Refiners' Motion for Summary Judgment holding that neither the record before the court nor Harris' complaint contained sufficient facts to support Harris' allegations that the union acted in a manner which was arbitrary, capricious or in bad faith (Petitioner's Appendix, pp. 13A-21 at pp. 19-21).



Harris filed several post-judgment motions all of which were denied by the district court (Petitioner's Appendix, at pp. 23-38). Following the denial of all of Harris' post-judgment motions, he appealed the district court's granting of summary judgment.

In an unpublished opinion filed on December 22, 1987, the Sixth Circuit Court of Appeals affirmed the summary judgment granted by the district court (Petitioner's Appendix, pp. 1-11, at 10, 11). Harris filed a Petition for Rehearing *En Banc* to the Sixth Circuit Court of Appeals. On March 1, 1988 the court denied the petition finding that the issues raised in the petition were fully considered upon the original submission and decision of the case (Petitioner's Appendix at pp. 12-13).

## REASONS WHY THE PETITION SHOULD BE DENIED

### I. SUMMARY JUDGMENT WAS PROPERLY GRANTED IN RESPONDENTS' FAVOR SINCE PETITIONER FAILED TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT.

#### A. The holding of the court below is consistent with well settled Supreme Court precedents for the granting of summary judgment.

This Court has long recognized and consistently held that the entry of summary judgment is mandated against a party who fails to establish the existence of a genuine, triable issue of material fact. *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253 (1968); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The Party opposing a motion for summary judgment "may not rest

upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine fact for trial". *First National Bank of Arizona v. Cities Service Co.*, *supra*, 391 U.S. at 288 (1968).

Reiterating the standard for summary judgment established in Rule 56(c) of the Federal Rules of Civil Procedure, this Court recently emphasized the burden of the non-moving party in a summary judgment proceeding to demonstrate the existence of the essential elements of his case.

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact", "since a complete failure of proof concerning a party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986).

Moreover, this Court also observed that it is not necessary for the moving party to submit affidavits negating the opposing party's claims. Rather, the movant need only point out to the district court that there is an absence of evidence to support the non-moving party's claims.

. . . we find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim. On the contrary, Rule 56(c), which refers to "the affidavits, *if any*" (emphasis added), suggests the absence of such a requirement. And if there were any doubt about the meaning of Rule 56(c) in this regard, such doubt is clearly removed by Rules 56(c) and (b), which provide that

claimants and defendants, respectively, may move for summary judgment “*with or without supporting affidavits*”. (emphasis added). The import of these subsections is that, regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c) is satisfied. *Celotex Corp.*, *supra*, at 323.

Additionally, this Court explained in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) that to survive summary judgment there must be a showing of a genuine issue of *material* fact rather than just an issue over some irrelevant or unnecessary facts.

By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment;

\* \* \* \* \*

Factual disputes that are irrelevant or unnecessary will not be counted. *Anderson v. Liberty Lobby, Inc.*, *supra*, 477 U.S. 247-248.

Next, and as this Court also observed in *Anderson v. Liberty Lobby, Inc.*, *supra*, it is the substantive law that identifies which facts are material.

**B. The court below correctly applied the standards set forth in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) and *Vaca v. Sipes*, 386 U.S. 171 (1967) in holding that Petitioner failed to establish a genuine issue of material fact in his hybrid §301 action.**

Turning to the substantive law involved in a hybrid §301 case, it is well settled that in order to prevail, a plaintiff must prove *both* that the employer breached the

collective bargaining agreement and that the union breached its duty of fair representation. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Vaca v. Sipes*, 386 U.S. 171 (1967). Accordingly, to prevail against either the company or the union a plaintiff must prove both elements. *Hines, supra*, at 570. If Petitioner cannot show even one element, his claim must fail.

Moreover, a breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes, supra* at 190. Thus, to prevent the granting of summary judgment in a hybrid §301 action a plaintiff must show the existence of a genuine issue of material fact as to whether the union's conduct toward him was arbitrary, discriminatory, or in bad faith.

Additionally, it is equally well settled that in order to show the existence of a genuine issue of material fact with respect to either of the elements of a hybrid §301 action, a plaintiff must present more than mere conclusory statements or unsupported allegations. *E.g., Whitten v. Anchor Motor Freight, Inc.*, 521 F.2d 1335 (6th Cir., 1975), *cert. denied*, 425 U.S. 981 (1976); *Balowski v. UAW*, 372 F.2d 829 (6th Cir., 1967). In fact, as this court noted in *Anderson v. Liberty Lobby, supra*, a party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings but must instead set forth *specific facts* showing that there is a genuine issue for trial. The non-moving party must present affirmative evidence from which the trier of fact might return a verdict in his favor. Otherwise, summary judgment is well taken. 477 U.S. at 256, 257.

Respondent Refiners, as the moving party, met its burden once it "showed-that is, pointed out to the district court-that there [was] an absence of evidence to support [an essential element] of the non-moving party's case". *Celotex Corp. v. Catrett*, 477 U.S. at 325. Thus, once it was "pointed out" that there was an absence of evidence to show that the union breached its duty of fair representation, an essential element in a hybrid §301 case, the burden then passed to Petitioner Harris to present specific facts to show that the union did breach the *Vaca v. Sipes, supra*, duty of fair representation standard.

In this regard and after reviewing the record, the court below determined that in response to Refiners summary judgment motion Harris failed to show either the existence of a material question of fact or that the underlying substantive law did not permit such a decision.

In the case at hand, the court below properly applied the standard for entry of summary judgment against Petitioner Harris. Specifically, the court determined in response to Refiners' motion for summary judgment that Harris had failed to meet the *Vaca* standard because he failed to show that the union's conduct toward him was arbitrary, discriminatory or in bad faith. In fact, Harris failed entirely to respond to Refiners' motion for summary judgment even after the passage of some ten months. Accordingly, the district court searched the complaint and record in deciding the motion. The only support for Harris' allegations were the conclusory and unsupported statements in his complaint and discovery answers. This, the court found, was insufficient to show the existence of a genuine issue of material fact. (Petitioner's Appendix, pp. 10, 11).

Quite simply, Harris failed to establish the existence of one of the essential elements of his case. Thus, the court below properly applied the law regarding the entry of summary judgment and review is clearly not merited.

## II. THIS CASE DOES NOT MERIT SUPREME COURT REVIEW.

Rule 17 of the Rules of the Supreme Court of the United States provides that:

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore.

No such special and important reasons exist in this case.

The decision of the court below is fully consistent with its prior rulings. Moreover, the decision was also consistent with the authority from other circuits as well as the precedents of this Court.

Petitioner disagrees with the factual determinations made by the court below and through the Petition for the Writ is seeking to have this Court review those factual findings. This however is not the purpose of a Writ of Certiorari.

Simply stated, this case does not involve any conflict between the circuits nor does it present a federal question in conflict with a state court. Likewise, this claim is not of national importance. Rather, it is a case involving a straightforward application of the hybrid §301 precedents to a situation in which the plaintiff presented no evidence to support his claims or allegations. Therefore, this case does not satisfy the requirements and standards set forth in Rule 17.

## CONCLUSION

Based on all of the foregoing reasons Respondent Refiners respectfully requests that this Court deny the Petition for Writ of Certiorari. The district court and the Sixth Circuit properly found that no genuine issue of material fact existed in support of Petitioner's hybrid §301 action.

Moreover, this case does not merit Supreme Court review as it presents no conflict between or among the circuits, no conflict with the precedents of this Court, and no issue of such importance as to warrant this Court's review.

Therefore, for all of these reasons, the Petition should be denied.

Respectfully submitted,

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